

IN RE: PETITION FOR SPECIAL EXCEPTION * BEFORE THE
NW/8 Butler Road, 320' W of * DEPUTY ZONING COMMISSIONER
Nantua Mill Road (3542 Butler Road)
4th Election District * OF BALTIMORE COUNTY
3rd Councilmanic District * Case No. 90-190-X
Peyton S. Cochran, et ux
Petitioners

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Petitioners herein request a special exception to permit a non-commercial dog kennel on the subject property in accordance with Petitioners' Exhibits 1A and 1B.

The Petitioners appeared, testified, and were represented by George A. Nilson, Esquire. Also appearing on behalf of the Petition were Elinor Pumpian, Nancy P. Brewski, and Pamela Phillip. Samuel and Arlene Banks appeared as Protestants.

Testimony indicated that the subject property known as 3542 Butler Road, consists of 70.290 acres zoned R.C. 2 and is improved with a single family dwelling, stable, 14 sheds and a dog run area. Testimony presented indicated that Petitioners have had numerous dogs on the property since 1961. Mrs. Cochran testified that she and her husband currently have 16 Basset Hounds, 3 Irish Setters, 2 Labrador Retrievers, 1 Jack Russell Terrier, and 4 puppies of mixed breed. Testimony indicated that all of the dogs are considered personal pets and are not raised for commercial purposes. Mrs. Cochran testified the Basset Hounds are used during hunting season and that they participate in the annual Greenapring Hunt. She indicated that 3 times a week during the months of September through April all the Basset Hound dogs are used by her for rabbit hunting. She stated she usually goes out approximately 2 hours in the early morning and again

in the afternoons. Mrs. Cochran testified that all of the dogs are kept on her property in the 8' x 12' kennel building, which used to be an old chicken house, and the 60' x 35' stable building. Ms. Cochran indicated the dogs are confined to the kennel, stable and shed buildings, which are surrounded by a fence, in the area depicted in Petitioner's Exhibit 1A. Testimony indicated that approximately one year ago, Petitioners learned that having more than 3 dogs on the property, even as personal pets, constituted a kennel under the B.C.Z.R. and required a special exception hearing. Subsequently, Petitioners filed the instant petition for approval. Mrs. Cochran testified that in the last 5 or 6 years, she has only received complaints from Mrs. Banks on 4 or 5 occasions. Mrs. Cochran indicated that upon hearing the dogs barking and/or receiving a complaint, she takes whatever steps are necessary to quiet them. She noted that if the dogs bark at inappropriate hours or for an inappropriate length of time, she takes steps to quiet them as she would not want them to disturb her neighbors or her own peace and quiet. Counsel for Petitioners had Mrs. Cochran address all the requirements of Section 502.1 of the B.C.Z.R. Mrs. Cochran concluded that, in her opinion, the granting of the special exception would not conflict with said requirements.

In support of Petitioners' request, Ms. Phillips testified that she moved to the area in May 1989. She stated that although her work schedule varies, she has never been awakened or disturbed by the dogs, even with the windows open. Ms. Phillips further testified that while she has heard the dogs barking on occasion, they are usually quiet within a reasonable period of time. She indicated that the Petitioners' use of the property by keeping the Basset Hounds and other dogs on the property was not detrimental to her personally.

Ms. Pumpian testified on behalf of the Petition. She stated that her property lies between the Protestants' and Ms. Phillips' properties. She testified that her bedroom window faces the subject property and while she has heard barking a couple of times at an inappropriate hour, she has spoken with Mrs. Cochran, who has responded appropriately in alleviating any noise problems. Ms. Pumpian further testified as to the number of geese in the area and the noise they generate. She indicated the geese have weakened and disturbed her more than the dogs.

Ms. Brewster, another landowner in the area, testified that in her opinion, the relief requested would not be detrimental to the health, safety or general welfare of the community. She testified that she has two dogs of her own and that the Protestant, Mrs. Banks, has called her on a number of occasions to complain about Ms. Brewster's dogs barking.

Petitioners and Petitioners' witnesses indicated that barking of dogs in the area is not a disruptive and/or uncommon as many of the adjoining property owners have dogs. The witnesses concluded that on some occasions when complaints have been generated the dogs allegedly causing the problems have not been the dogs barking.

Mr. & Mrs. Banks testified that they have lived in the area for the past 7 years and that they are opposed to the Petitioners' request. They indicated that the dogs are audible in the early morning hours and in the late evening. Mr. & Mrs. Banks want the number of dogs kept on the property to a limited number. Further, the Protestants asked that the relief requested, if granted, be limited to the Petitioners' ownership of the property.

In response to the Protestants' testimony, Mrs. Cochran testified

that the dogs are fed at approximately 7:30 AM and again at approximately 4:00 PM.

Petitioners seek relief from Section 1401.2C.2 of the B.C.Z.R. pursuant to Section 502.1 of the B.C.Z.R.

It is clear that the B.C.Z.R. permits the use proposed in an R.C.2 zone by special exception. It is equally clear that the proposed use would not be detrimental to the primary uses in the vicinity. Therefore, it must be determined if the conditions as delineated in Section 502.1 are satisfied.

The Petitioner had the burden of adducing testimony and evidence which would show that the proposed use met the prescribed standards and requirements set forth in Section 502.1 of the B.C.Z.R. The Petitioner has shown that the proposed use would be conducted without real detriment to the neighborhood and would not adversely affect the public interest. The facts and circumstances do not show that the proposed use at the particular location described by Petitioner's Exhibit 1 would have any adverse impact above and beyond that inherently associated with such a special exception use, irrespective of its location within the zone. *Schultz v. Pritts, 432 A.2d 1319 (1981).*

The proposed use will not be detrimental to the health, safety, or general welfare of the locality, nor tend to create congestion in roads, streets, or alleys therein, nor be inconsistent with the purposes of the property's zoning classification, nor in any other way be inconsistent with the spirit and intent of the B.C.Z.R.

After reviewing all of the testimony and evidence presented, it appears that the special exception should be granted with certain restrictions as more fully described below.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the relief requested in the special exception should be granted.

WHEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner for Baltimore County this 16th day of February, 1990 that the Petition for Special Exception to permit a non-commercial dog kennel on the subject property, in accordance with Petitioner's Exhibits 1A and 1B, be and is hereby GRANTED, subject, however, to the following restrictions which are conditions precedent to the relief granted:

- 1) The Petitioners are hereby made aware that proceeding at this time is at their own risk until such time as the 30-day appellate process from this order has expired. If, for whatever reason, this order is reversed, the Petitioners would be required to return, and be responsible for returning, said property to its original condition.
- 2) Petitioners shall have no more than 22 adult dogs on the property at any one time. In the event Petitioners have more than 16 adult dogs, a minimum of 16 must be Basset Hounds used for hunting. If any of the dogs has a litter, the puppies, after four (4) months of age, shall either be counted as one of the permitted 22 adult dogs, or be kept at another location off the subject property.
- 3) The granting of this special exception is limited to Petitioners. In the event Petitioners no longer reside on the subject property or the property is sold, transferred and/or leased, the special exception granted herein shall be rescinded. If the subsequent property owners wish to have more than three (3) dogs, a new Petition for Special Exception must be filed to determine if the use of the property for more than three (3) dogs is appropriate.

ANN:bjb
Deputy Zoning Commissioner
for Baltimore County

PETITION FOR SPECIAL EXCEPTION

TO THE ZONING COMMISSIONER OF BALTIMORE COUNTY:
The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Exception under the Zoning Law and Zoning Regulations of Baltimore County, to use the herein described property for A dog kennel.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of above Special Exception advertising, posting, etc., upon filing of the petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I We do solemnly declare and swear under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Legal Owner(s):
Peyton S. Cochran, Jr.
Signature: Peyton S. Cochran, Jr.
Address: 3542 Butler Road
City and State: Glyndon, MD 21071
301/833-1150

Attorney for Petitioner:
(Type or Print Name) Address Phone No.
Signature City and State
Name, address and phone number of legal owner, contact purchaser or representative to be contacted
Address Name City and State Phone No.

ORDERED By The Zoning Commissioner of Baltimore County, this 22 day of February 1990, that the subject matter of this petition be advertised, as required by the Zoning Law of Baltimore County, in two newspapers of general circulation throughout Baltimore County, that property be posted, and that the public hearing be held before the Zoning Commissioner of Baltimore County in Room 106, County Office Building in Towson, Baltimore County, on the 22 day of Nov 1989 at 2 o'clock P. M.
J. Robert Thomas
Zoning Commissioner of Baltimore County

B.C.O.-No. 1 (over)

PETITIONER(S) SIGN-IN SHEET

NAME ADDRESS
Peyton S. Cochran, Jr. 3542 Butler Rd, Glyndon, Md. 21071
Elinor L. Pumpian 3542 Butler Rd, Glyndon, Md. 21071
Nancy P. Brewski 3466 Butler Rd, Glyndon, Md.
Pamela Phillips 3321 Butler Rd, Glyndon, Md.
3500 Butler Rd, Glyndon, Md.

PETITIONER(S) SIGN-IN SHEET

NAME ADDRESS
Samuel Banks 3454 Butler Rd, Glyndon
Samuel Banks same

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 885-5333
March 2, 1990
Mr. Samuel E. Banks
3542 Butler Road
Glyndon, Maryland 21071
RE: Petition for Special Exception
NW/8 Butler Road, 320' W of Nantua Mill Road
(3542 Butler Road)
4th Election District - 3rd Councilmanic District
Peyton S. Cochran, Jr., et ux - Petitioners
Case No. 90-190-X
Dear Mr. Banks:
In response to your letter dated February 26, 1990 regarding the above-captioned matter and your request for a Petition to reconsider the decision rendered on February 6, 1990, the following comments are offered.
Please be advised that after careful review and consideration of your request, I have determined that there will be no modification to the order issued.
As you know, you have the right to file an Appeal to the County Board of Appeals in the event you are unhappy with the decision in this matter. Should you desire to pursue the matter through the appeals process, please contact Charlotte Redcliffe at 867-3791.
Very truly yours,
ANN M. NASTAROWICZ
Deputy Zoning Commissioner
for Baltimore County
ANN:bjb
cc: George A. Nilson, Esquire
1100 Charles Center South
36 S. Charles Street, Baltimore, Md. 21201
Date Filed

February 26, 1990

RECEIVED
FEB 28 1990
ZONING OFFICE

Ann M. Nastarowicz
Deputy Zoning Commissioner
for Baltimore County
Office of Planning & Zoning
Towson, MD 21204

Re: PETITION FOR SPECIAL EXCEPTION
N/S Butler Road, 320' W of Mantua Mill Road
(3542 Butler Road)
4th Election District - 3rd Councilmanic District
Peyton S. Cochran, Jr., et ux - Petitioners
Case No. 90-190-X

Dear Ms. Nastarowicz:

Please accept this memorandum as a formal motion to reconsider Case No. 90-190-X for the following reasons:

- a) Your "Findings of Fact and Conclusion of Law" did not even mention my request that the dogs be enclosed during sleeping hours to reduce chances of an outbreak of barking due to a wild animal in the area and to reduce the audibility of the barking if it occurs. This was the crux of my testimony.
- b) In Case No. 88-348-XA, Harry Isaacs - Petitioner, the facts were very similar (i.e., petitioner was requesting special exception for an already-existing kennel). You ordered on March 18th, 1988 that Mr. Isaacs' dogs be inside the kennel building between the hours of 7:30 p.m. and 7:00 a.m. I requested that you follow that precedent with regard to the Cochran's kennel.

In the Isaacs' case, the dogs were closer to my house but, there were only six. The Cochran's dogs are not as close but they number 22, plus puppies.

- c) Only one of the petitioner's three witnesses, Mrs. Phillips, has an interest equal to mine in limiting noise, which, as you know, affects both property value and one's ability to enjoy his property. Mrs. Phipps is a property renter and is, therefore, not concerned with the long term implications of a 22 dog kennel. Mrs. Brewster lives 1,000 yards further from the kennel than I do and, therefore, is out of range of the barking noise. Mrs. Phillips lives equidistant from the kennel but, is protected by more wooded area.

I further request that you respond expeditiously or that you suspend the expiration of the appeal period while you reconsider. Your response to this memorandum is critical to my decision regarding an appeal.

I have attempted to be brief but, would be happy to provide further detail on any of the points I have made.

Yours truly,

Samuel F. Banks
Samuel F. Banks

SSB/mat
50211
cc: J. Robert Haines
Zoning Commissioner

Baltimore County
Zoning Commissioner
Office of Planning & Zoning
Towson, Maryland 21204
(301) 887-3333
J. Robert Haines
Zoning Commissioner

DATE

Mr. & Mrs. Peyton S. Cochran, Jr.
3542 Butler Road
Glyndon, Maryland 21071

Re: Petition for Special Exception
CASE NUMBER: 90-190-X
N/S Butler Road, 320' W of Mantua Mill Road
3542 Butler Road
4th Election District - 3rd Councilmanic District
Petitioner(s): Peyton S. Cochran, Jr., et ux
HEARING: WEDNESDAY, NOVEMBER 22, 1989 at 2:00 p.m.

Dear Mr. & Mrs. Cochran:

Please be advised that \$_____ is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID AND THE ZONING SIGN AND POST SET(S)

Baltimore County
Zoning Commissioner
County Office Building
111 West Chesapeake Avenue
Towson, Maryland 21204

Account: R-001-6150

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CERTIFICATE OF PUBLICATION

Pikesville, Md., Nov 19 89

THIS IS TO CERTIFY, that the annexed advertisement was published in the NORTHWEST STAR, a weekly newspaper published in Pikesville, Baltimore County, Maryland before the 2nd day of Nov 19 89 the first publication appearing on the 1st day of Nov 19 89 the second publication appearing on the 1st day of Nov 19 89 the third publication appearing on the 1st day of Nov 19 89

THE NORTHWEST STAR

Manager Jim Buh

Cost of Advertisement 25.20

EST. STAR CLASSIFIED

HELP WANTED

FANTASTIC OPPORTUNITY

THE EXCEL GROUP

1-800-233-3185

LEGAL NOTICE

NOTICE OF HEARING

The Zoning Commission of Baltimore County is holding a public hearing on the following petition for special exception:

Case No. 90-190-X

N/S Butler Road, 320' W of Mantua Mill Road

3542 Butler Road

4th Election District - 3rd Councilmanic District

Peyton S. Cochran, Jr., et ux

November 22, 1989 at 2:00 p.m.

At the County Office Building, 111 West Chesapeake Avenue, Towson, Maryland 21204

For more information, contact Mr. Sandhofer at 659-9401

or Mr. Haines at 887-3333

or Mr. Sullivan at 887-3333

or Mr. Banks at 887-3333

or Mr. Phillips at 887-3333

or Mr. Brewster at 887-3333

or Mr. Isaacs at 887-3333

or Mr. Phipps at 887-3333

or Mr. Phillips at 887-3333

or Mr. Phillips at 887-3333

or Mr. Phillips at 887-3333

HELP WANTED

BANK TELLERS

Full time positions available at our Pikesville & Security locations. We train. Minimum 1 year cash handling experience & consistent work history. Excellent communication skills & light typing a must. Part-time positions also available in our downtown & Pikesville offices. Full time positions offer competitive salary & excellent benefits package. For more info, contact Ms. Sandhofer at 659-9401

FAIRFAX SAVINGS

1-800-233-3185

TRICK OR TREAT NO TRICKS!

FREE SECURITY DEPOSIT!

Liberty West Apartments

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LEGEND

1. BUTLER RD
2. PINEY GROVE RD
3. BELMONT RD
4. TUFTON AVE
5. LONGNECKER RD
6. MANTUA MILL RD

SCALE
1" = 900'August
1969
PhotoREDI SERVICES
A Subsidiary of REDI Services Corp.
2224 N.W. 115TH STREET
MIAMI, FLORIDA 33182
(305) 885-8887

